

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MELANIE ATKINSON,
Plaintiff,

CIVIL ACTION

v.

**LUITPOLD PHARMACEUTICALS, INC.,
AMERICAN REGENT, INC., DAIICHI
SANKYO, INC., DAIICHI SANKYO CO.,
LTD, AND VIFOR
PHARMACEUTICALS MANAGEMENT
LTD ,**

NO. 19-277

Defendants.

ORDER

AND NOW, this 23rd day of March, 2020, upon consideration of Defendants American Regent, Inc., Daiichi Sankyo, Inc., and Daiichi Sankyo US Holdings, Inc.'s Motion to Dismiss for Failure to State a Claim and briefing in support thereof (ECF Nos. 64 & 91), and Plaintiff's response thereto (ECF No. 88), **IT IS HEREBY ORDERED** that the Motions to Dismiss are **GRANTED** as follows:

1. Defendants' Motions to Dismiss Count I (negligence) and Count XI (gross negligence) are **GRANTED**. Counts I and XI are **DISMISSED WITHOUT PREJUDICE** to asserting a theory of failure to test.
2. Count III (negligent design defect), Count IV (negligent misrepresentation), Count VIII (breach of express warranty), Count IX (breach of implied warranty), and Count X (breach of consumer protection laws) are **DISMISSED WITH PREJUDICE** upon Plaintiff's representation that she is no longer pursuing these claims.
3. Defendants' Motions to Dismiss Count II (negligent failure-to-warn), Count V (fraud), Count VI (strict liability failure-to-warn), and Count VII (strict liability defective

design) are **GRANTED**. Counts II, V, VI, and VII are **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiff's motion for leave to amend is **HEREBY GRANTED**. Plaintiff shall amend her Complaint **on or before April 23, 2020**. The Amended Complaint shall not include any claims that have been dismissed with prejudice.

BY THE COURT:

/s/Wendy Beetlestone, J

WENDY BEETLESTONE, J.